

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

ROBERT E. WILLIAMS

Debtor

Case No. 93-13232

APPEARANCES:

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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

The current matter before the court is the motion of Robert E. Williams ("Debtor") for an order pursuant to 11 U.S.C. § 522(f)¹ to avoid the judgment lien of Acquisitions Plus, LLC ("Creditor") which was acquired by an assignment from The Enforcer, Inc. The court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(B), 157(b)(2)(K) and 1334(b).

FACTS

¹ 11 U.S.C. §522 is entitled "Exemptions" and states in part:
(f)(1) ...[t]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is -
(A) a judicial lien, ...

From the pleadings submitted, the court finds the following:

1. The Debtor filed a voluntary petition for relief pursuant to chapter 7 of the United States Bankruptcy Code on August 20, 1993.
2. The Debtor received a chapter 7 discharge on or about December 6, 1993.
3. The Debtor's bankruptcy case was closed on or about June 17, 1996.
4. The Debtor's bankruptcy case was reopened by order of this court dated October 11, 2002.
5. The Debtor listed as an asset on Schedule A of the petition, real property located at 3 Castillion Court in the Town of Clifton Park, County of Saratoga, State of New York ("Castillion Court Property").
6. The Debtor's petition indicates the Castillion Court Property was his primary residence held jointly with his wife.
7. The current market value of the Debtor's one-half interest in the Castillion Court Property was scheduled at \$58,250.00.
8. The amount of the secured debt against the Castillion Court Property was scheduled at \$109,000.00.
9. The Debtor claimed a homestead exemption for the Castillion Court Property of \$10,000.00 on Schedule C.
10. Marjam Supply Co., Inc. obtained a judgment against the Debtor, dated May 18, 1993, in the sum of \$39,291.93 (the "Judgment").
11. The Judgment was filed with the Saratoga County Clerk's Office on May 25, 1993.
12. The Debtor scheduled Marjam Supply Co., Inc. on Schedule F as an unsecured creditor holding a claim in the amount of \$39,291.00.
13. On or about June 17, 2002, Marjam assigned the Judgment to The Enforcer, Inc.
14. An affidavit was executed by Marjam to "...induce The Enforcer, Inc. to take an assignment of the Judgment..." (Marjam Supply, Inc. Affidavit Regarding Assignment of Judgment, Exhibit I to Debtor's Notice of Motion for an Order Avoiding Judgment Lien.) The affidavit states that the Judgment debt had not been discharged in bankruptcy.
15. By letter to the Debtor dated July 11, 2002, The Enforcer, Inc. sought to collect the Judgment.

16. By letter dated July 15, 2002, Debtor's prior bankruptcy counsel, Donald Boyajian, Esq., advised Nancy Tedeschi, President of The Enforcer, Inc., of the Debtor's bankruptcy filing.

17. By facsimile to Attorney Boyajian dated July 16, 2002, Ms. Tedeschi acknowledged the bankruptcy filing but opined that this court would deny the reopening of the Debtor's case based on "Lache" [sic].

18. On or about August 2, 2002, The Enforcer, Inc. assigned its interest in the Judgment to the Creditor.²

19. The Creditor states that it is a successor entity to The Enforcer, Inc. (Creditor Attorney's Affirmation dated November 22, 2002 p. 5, para. 17.)

ARGUMENTS

The Debtor states there is no specific statute or rule addressing any time limitation in pursuing a §522(f) motion; therefore, his request is timely. Further, he believes equity is on his side in that the Creditor is endeavoring to parlay its original investment to an unreasonable extreme.

The Creditor argues that on the filing date of the petition, the state of the law was that a debtor needed equity over and above liens for a homestead exemption to be available. Because the value of the Debtor's interest was only \$58,250.00 on realty encumbered by secured debt of \$109,000, no exemption should be permitted. Additionally, the Creditor posits that the motion should be denied because the Debtor is guilty of laches.

DISCUSSION

² The pleadings do not clearly indicate when the Creditor actually obtained the Judgment from The Enforcer, Inc. The Debtor states the assignment occurred on August 2, 2002. The Creditor, in its Attorney's Affirmation dated November 22, 2002, states the transfer took place on August 23, 2002. A copy of the assignment is annexed to the Debtor's notice of motion and is dated August 2, 2002; it was recorded on August 2, 2002. However, the Notice of Petition and Petition filed by the Creditor's attorney seeking state court approval to enforce the Judgment is dated July 30, 2002. Under any scenario, the assignment of the Judgment to the Creditor took place after the bankruptcy communication to Ms. Tedeschi and her response to Debtor's bankruptcy counsel.

The Creditor's first argument is the Debtor had no equity to protect in the Castillion Court Property and, thus, would not be able to avail himself of the lien avoidance relief of § 522(f). The Creditor has misinterpreted the Debtor's schedules. The Debtor valued his 50% interest in the realty at \$58,250. Thus, the worth of the entire property, as valued by the Debtor, would have been \$116,500, leaving a small amount of equity to protect. Therefore, the Debtor is within the safe harbor of § 522(f).

The more important question is whether or not the Debtor is guilty of laches. Laches is defined as:

The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting the claim, when that delay or negligence has prejudiced the party against whom relief is sought. BLACK'S LAW DICTIONARY 879 (7th ed. 1999).

Additionally, the defendants must have suffered some amount of prejudice to successfully invoke laches, even if plaintiffs have a weak or no excuse for their delay. *In re Fairchild*, 285 B.R. 98, 101 (Bankr. D. Conn. 2002) (citation omitted). "As a matter of federal civil procedure, laches is an affirmative defense...When a plaintiff brings suit within the limitation period, a defendant claiming laches has the burden of proving both unreasonableness of the delay and the occurrence of prejudice." *In re Procaccianti*, 253 B.R. 590, 591 (Bankr. D.R.I. 2000) (citation omitted). Proving the prejudice will be pivotal, for a post-discharge lien avoidance action will be barred only if the debtor's delay has resulted in such prejudice as to warrant barring the lien avoidance relief. *Noble v. Yingling*, 37 B.R. 647, 650 (D. Del. 1984).

As regards the time lapse, the Creditor specifically argues that:

...At no time during or after the administration of the Debtor's bankruptcy did he make an application to this Court pursuant to Federal Bankruptcy Code 11 U.S.C.A. § 522(f)(1), or make an application to the Court which issued the judgment pursuant to New York's Debtor Creditor Law § 150, seeking to discharge the judgment lien of

Marjam Supply Co., Inc. which encumbered his interest in the 3 Castillion Court property... Given the circumstances of this case, it is respectfully submitted that a delay of over 9 years is unreasonable. (Creditor's Attorney's Affirmation dated Nov. 22, 2002 p. 9.)

The Debtor responds by stating simply that "the mere passage of time should not bar the debtor from avoiding a judgment lien against his residence pursuant to 11 U.S.C. § 522(f)."

(Memorandum of Law in Support of Debtor's Motion for an Order Avoiding Judgment Lien

Pursuant to 11 U.S.C. § 522(f), dated Jan 8, 2003, p. 3).

While the Debtor is correct that neither § 522(f) nor F.R.B.P. 4003(d)³ contains any specific time prohibition for initiating a lien avoidance motion, an unreasonable time delay and prejudice can be the predicate to a finding of laches which would be fatal to such a motion. The court agrees with the Creditor that the nine-year gap in this case is unreasonable, especially with the total absence of any explanation by the Debtor. The Debtor took an appeal from the Judgment in state court and then did nothing until the enforceability of the Judgment became an issue. Of course, as previously discussed, the unreasonable time interval in and of itself is not enough to deny the motion; the creditor must also show prejudice.

The Creditor argues three instances of prejudice:

- 1) If the Debtor had acted more promptly, the Creditor would not have purchased an assignment of the Judgment for \$10,000.00.
- 2) The Creditor has incurred expenses in prosecuting the state court action to enforce the Judgment.
- 3) The Creditor will incur the expense necessary to procure an appraisal of the Castillion Court Property as of the bankruptcy petition date.

³ F.R.B.P. 4003 is entitled "Exemptions" and states in part:

(d) Avoidance by Debtor of Transfers of Exempt Property. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

The insurmountable problem with the above three arguments is that the Creditor, as successor in interest to its assignor, is charged with the knowledge of The Enforcer, Inc., which had knowledge of the Debtor's bankruptcy filing. Not only was The Enforcer, Inc. aware of the bankruptcy, but also of the possibility of the current § 522(f) motion. Ms. Tedeschi's facsimile to Debtor's former bankruptcy counsel makes reference to her defense to reopening the bankruptcy case that she had previously relied on. Thus, the Creditor went into this business transaction with its corporate eyes wide open and cannot now complain of any prejudice.

Even if The Enforcer, Inc. had not assigned the Judgment to the Creditor, The Enforcer, Inc. would have been hard-pressed to argue prejudice in prosecuting the state court action⁴ and in conducting any valuation hearing because The Enforcer, Inc. would have had, and may still have, a valid cause of action against Marjam Supply, Inc. Clearly, the Judgment was assigned based on a false affidavit executed by Marjam. The affidavit states that the Judgment debt had not been discharged in bankruptcy. Meanwhile, Marjam's debt was scheduled by the Debtor. As no objections to discharge or dischargeability were interposed by Marjam, the Marjam debt was covered by the Debtor's discharge. The business decision to continue to seek to enforce the Judgment by The Enforcer, Inc., and later the Creditor, in spite of the obvious bankruptcy issues it became aware of, makes any claim of prejudice ring hollow.

The court will schedule a valuation hearing to determine to what extent, if any, the Judgment impairs the homestead exemption of the Debtor.

⁴ Even in the absence of the Debtor's bankruptcy, the court is unclear how the Creditor could ever prevail in any action to enforce the Judgment to, in effect, sever a tenancy by the entirety and force the Debtor's spouse from the marital home. *See generally* 24 N.Y. Jur.2d Cotenancy and Partition § 53.

It is so ORDERED.

Dated:

Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge